EXHIBIT A

Honorable James L. Robart

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

Juweiya Abdiaziz ALI; A.F.A., a minor; Reema Khaled DAHMAN; G.E., a minor; Ahmed Mohammed Ahmed ALI; E.A., a minor; on behalf of themselves as individuals and on behalf of others similarly situated, Plaintiffs, v. Donald TRUMP, President of the United States of America; U.S. DEPARTMENT OF STATE; Rex W. TILLERSON, Secretary of State; U.S. DEPARTMENT OF HOMELAND SECURITY; John F. KELLY, Secretary of Homeland Security; U.S. CITIZENSHIP AND IMMIGRATION SERVICES; Lori SCIALABBA, Acting Director of USCIS; OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE; Michael DEMPSEY, Acting Director of National Intelligence,[1] Defendants.	Case No.: 2:17-cv-00135-JLR MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION NOTE ON MOTION CALENDAR: March 3, 2017 ORAL ARGUMENT REQUESTED

[1] Defendant Rex W. Tillerson is substituted for Defendant Tom Shannon pursuant to Federal Rule of Civil Procedure 25(d).

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I. INTRODUCTION

On February 3, 2017, this Court issued a nationwide temporary restraining order (TRO) in *Washington v. Trump*, No. 2:17-cv-141-JLR (W.D. Wash.), enjoining and restraining President Trump, the Department of State (DOS), and the Department of Homeland Security (DHS) from, inter alia, enforcing Section 3(c) of Executive Order 13769 (EO), entitled "Protecting the Nation from Foreign Terrorist Entry into the United States." 82 Fed. Reg. 8977.[2] Section 3 of the EO suspends entry into the United States of citizens or nationals of Iran, Iraq, Libya, Somalia, Sudan, Syria, and Yemen—all predominantly Muslim countries—for a minimum of 90 days, allegedly for national security reasons. [3] Plaintiffs file this motion for preliminary injunctive relief on behalf of themselves and the proposed class, *see* Dkt. 3, to ensure that they are not subject to ongoing and future harm as a result of the unlawful EO, similar to the harm many of them experienced over the last week. They also ask that the Court convert the motion to a TRO should the Ninth Circuit Court of Appeals dissolve the existing TRO in *Washington* on a procedural basis, or for a reason other than a determination with respect to the merits of the challenge.

During the week prior to this Court's order in *Washington*, Defendants revoked the visas of thousands—if not tens of thousands—of purported class members pursuant to Section 3(c) of the EO. Also during the past week, Defendants suspended all immigrant visa processing, cancelling consular interviews and suspending adjudication of immigrant visa applications for

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[2] At least eight district courts already have issued temporary restraining orders enjoining Section 3(c) of the E.O. *See Darweesh v. Trump*, No. 1:17-cv-00480 (E.D. NY Jan. 28, 2017); *Doe v. Trump*, No. C17-126 (W.D. Wash. Jan. 28, 2017); *Aziz v. Trump*, No. 1:17-cv-116 (E.D. Va. Jan. 28, 2017); *Vayeghan v. Kelly*, No. CV 17-0702 (C.D. Cal. Jan. 29, 2017); *Mohammed v. United States*, No. CV 17-00786 AB (PLAx) (C.D. Cal. Jan. 31, 2017); *Arab American Civil Rights League v. Trump*, No. 17-cv-10310-VAR-SDD (E.D. Mich. Feb. 2, 2017); *State of Washington v. Trump*, No. 17-cv-00141-JLR (W.D. Wash. Feb. 3, 2017). One court initially issued a TRO, but declined to extend it. *See Loughalam v. Trump*, No. 17-cv-10154-NMG, Dkt. 6 (D. Mass. Jan. 29, 2017) & Dkt. 69 (D. Mass. Feb. 3, 2017).

[3] None of the individuals who committed the attack on September 11, 2001 were from these seven listed countries, and the Trump Administration has provided no evidence suggesting that the longstanding, uniform, and rigorous vetting process at U.S. embassies and consulates serving nationals from these seven countries is even remotely less secure than elsewhere.

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thousands of proposed class members from the seven countries, leaving them stranded abroad and indefinitely separated from their families and employment. Plaintiffs and proposed class members are suffering both emotionally and financially from these separations and from the existing lack of certainty and transparency in the immigrant visa process caused by Section 3 of the EO. Pursuant to Rule 65(b) of the Federal Rules of Civil Procedure and Local Rule 65(b), Plaintiffs ask this Court to enjoin Section 3 and order Defendants to resume lawful processing and issuance of immigrant visas and to allow individuals approved for immigrant visas to be reunited with their family and employer petitioners in the United States.

Plaintiffs and proposed class members[4] have standing to challenge Section 3 of the EO and can overwhelmingly demonstrate a likelihood of success on the merits, a likelihood of irreparable harm in the absence of preliminary injunctive relief, that the balance of equities tips in their favor, and that an injunction is in the public interest.

Plaintiffs ask this Court to issue a preliminary injunction which:

1. Enjoins and restrains Defendants from enforcing Section 3 of Executive Order 13769 (EO), in so far as it precludes persons approved for immigrant visas from boarding flights to the United States and entering the country as lawful permanent residents;
2. Enjoins and restrains Defendants from applying Section 3 of the EO to suspend the processing and/or issuance of immigrant visas to Plaintiffs Juweiya Abdiaziz Ali and A.F.A., Reema Khaled Dahman and G.E., and all other proposed class members who have filed visa petitions and the beneficiaries of those visa petitions who are applying for immigrant visas;
3. Enjoins and restrains Defendants from revoking immigrant visas based on Section 3 of the EO;
4. Orders Defendants to reinstate and, where necessary, reissue, the immigrant visas of all nationals from the seven countries that were revoked pursuant to the issuance of the EO, without the need for the foreign national to reapply for a visa;
5. Orders Defendants to issue transportation letters, where necessary, to all nationals from the seven countries with validly issued immigrant visas, including all individuals whose visas are reinstated pursuant to #4 above; and
6. Orders Defendants to advise immigrant visa petitioners, through electronic mail or otherwise, of the status of immigrant visa applications submitted by

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[4] To the extent the Court deems it necessary, Plaintiffs and proposed class members meet the standards for provisional class certification. Plaintiffs' motion for class certification, Dkt. 3, is incorporated herein.

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beneficiaries of their petitions.

Moreover, should the Ninth Circuit Court of Appeals dissolve the existing TRO in *Washington* on a procedural or other non-merits basis, Plaintiffs respectfully ask this Court issue an emergency temporary restraining order immediately providing the same relief listed above.

Notice to Defendants: On February 5, 2017, undersigned counsel notified Defendants that Plaintiffs would file a motion for preliminary injunctive relief with a protective motion for temporary restraining order on February 6, 2017. *See* Dkt. 10, Adams Decl. ¶¶3-5.[5]

II. ARGUMENT

A. STANDARD FOR OBTAINING PRELIMINARY RELIEF

To obtain a preliminary injunction, the moving party must show that: (1) she "is likely to succeed on the merits," (2) she "is likely to suffer irreparable harm in the absence of preliminary relief," (3) "the balance of equities tips in [her] favor," and (4) that "an injunction is in the public interest." *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 20 (2008). The Ninth Circuit uses a balancing, or "sliding scale," approach to evaluate requests for preliminary injunctions, clarifying that, where the balance of hardships tips strongly in her favor, the moving party may prevail as long as she shows that her claims raise serious legal questions. *See, e.g.*, *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131-35 (9th Cir. 2011). "Under this approach, the elements of the preliminary injunction test are balanced, so that a stronger showing of one element may offset a weaker showing of another." *Id.* at 1131-32. Under any test, Plaintiffs and the proposed class merit relief.[6]

B. PLAINTIFFS AND PROPOSED CLASS MEMBERS MERIT PRELIMINARY INJUNCTIVE RELIEF

1. Plaintiffs Have Standing to Raise Their Claims.

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[5] All declarations cited herein are being submitted concurrently with this motion.

[6] The standards for a TRO and a preliminary injunction are substantially the same. *See, e.g., Stuhlbarg Int'l Sales Co., Inc. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001).

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Plaintiffs satisfy all requirements necessary to demonstrate standing with respect to their statutory and constitutional claims. Under Article III of the U.S. Constitution, a plaintiff bringing suit must first show that:

> (1) it has suffered an "injury in fact" that is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical; (2) the injury is fairly traceable to the challenged action of the defendant; and (3) it is likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision.

Friends of the Earth, Inc. v. Laidlaw Envlt. Servs. (TOC), Inc., 528 U.S. 167, 180-81 (2000). The Administrative Procedure Act (APA) authorizes suit if a plaintiff is "suffering legal wrong because of agency action, or [was] adversely affected or aggrieved by agency action within the meaning of a relevant statute." 5 U.S.C. § 702. Plaintiffs must show that the interests they seek to protect are "arguably within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question." *Association of Data Processing Serv. Orgs., Inc. v. Camp*, 397 U.S. 150, 153 (1970).[7]

In a case challenging visa denials, the D.C. Circuit stated:

> The Executive has broad discretion over the admission and exclusion of aliens, but that discretion is not boundless. It extends only as far as the statutory authority conferred by Congress and may not transgress constitutional limitations. It is the duty of the courts, in cases properly before them, to say where those statutory and constitutional boundaries lie.

Abourezk v. Regan, 785 F.2d 1043, 1061 (D.C. Cir. 1986), *aff'd by an equally divided court*, 484 U.S. 1 (1987). Here, Plaintiffs seek non-discriminatory and constitutional application of the immigration laws. They, therefore, fall squarely within the zone of interests protected by the Immigration and Nationality Act (INA). *See* 8 U.S.C. §§ 1152(a)(1) (nondiscrimination); 1153 (allocation of immigrant visas); 1154 (procedure for granting immigrant status). *See infra* Section II.B.2.a.[8]

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[7] The test "is not meant to be especially demanding," and "there need be no indication of congressional purpose to benefit the would-be plaintiff." *Clarke v. Secs. Indus. Ass'n*, 479 U.S. 388, 399- 400 (1987).

[8] The Ninth Circuit also recognizes standing "when [a]suit challenges the authority of [a] consul to take or fail to take an action" in a mandamus action. *Patel v. Reno*, 134 F.3d 929, 932 (9th Cir. 1997) (suit by U.S. citizen and his wife, in India, challenging failure to adjudicate visa application); *see also Rivas v. Napolitano*, 714 F.3d

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Plaintiffs have standing to raise their statutory and constitutional claims irrespective of their location inside or outside the United States. The Supreme Court has held that nothing in its case law "categorically excludes" noncitizens in military custody outside the United States "from the privilege of litigation in U.S. courts." *Rasul v. Bush*, 542 U.S. 466, 484 (2004) (internal quotation marks omitted).[9] In *Rasul*, the noncitizens were captured by U.S. military officers while abroad in connection with hostilities. Even though they had no ties to the United States, the Court found they had standing to seek review. Here, Plaintiffs and proposed class members have significant ties to the United States, *see* Section II.B.3, *infra*, similarly entitling them to this Court's review. Moreover, to the extent that the Executive has plenary power over national security and military affairs, *Rasul* stands for the proposition that the Constitution nevertheless protects noncitizens outside the United States against any abuse of that plenary power by giving them access to the courts. Indeed, *Rasul* suggests that any tension between the plenary power doctrine and fundamental constitutional protections be resolved in favor of the latter; *Rasul* thus reinforces Plaintiffs' standing to raise, and be heard on, their claims that the EO on its face, and as applied, unconstitutionally discriminates on the basis of nationality and religion.

To the extent that only Plaintiffs Ahmed Ali, Reema Khaled Dahman, Juweiya Abdiaziz, and other U.S. citizen or lawful permanent resident (LPR) visa petitioner class members are raising a due process claim, they have standing. As an initial matter, U.S. citizens and LPRs have a constitutionally protected interest in marriage, family life, and child-rearing. *See, e.g.*, *Loving v. Virginia*, 388 U.S. 1, 12 (1967); *Cleveland Bd. of Educ. v. LaFleur*, 414 U.S. 632, 639-40 (1974); *Troxel v. Granville*, 530 U.S. 57, 65 (2000) (plurality op.). The Ninth Circuit has

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1108, 1110 (9th Cir. 2013) (suit by immigrant visa petitioner and beneficiary challenging failure to adjudicate motion to reconsider visa denial). Courts also recognize standing in challenges to denials of visa petitions brought by petitioners and visa beneficiaries. *See, e.g.*, *Hoosier Care, Inc. v. Chertoff*, 482 F.3d 987 (7th Cir. 2007) (suit by U.S. employer to challenge denial of employment-based visa petition); *Pinho v. Gonzales*, 432 F.3d 193 (3d Cir. 2005) (suit by U.S. citizen and her husband challenging denial of adjustment of status); *Grace Korean United Methodist Church v. Chertoff*, 437 F. Supp. 2d 1174 (D. Or. 2005) (suit by employer and potential employee).

[9] *See also Rasul*, 542 U.S. at 484-85 ("The courts of the United States have traditionally been open to nonresident aliens."); *id.* at 481 ("[T]here is little reason to think that Congress intended the geographical coverage of the [habeas] statute to vary depending on the detainee's citizenship.").

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confirmed that a U.S. citizen or LPR spouse has the right to bring a due process challenge to the denial of a family member's immigrant visa, rooted in the legal doctrine that "[f]reedom of personal choice in matters of marriage and family life is, of course, one of the liberties protected by the Due Process Clause." *Bustamante v. Mukasey*, 531 F.3d 1059, 1062 (9th Cir. 2008).[10] Proposed class members that are U.S. based-employers similarly have constitutionally protected interests.[11]

The Supreme Court's decision in *Kerry v. Din* further illustrates the Court's refusal to close the courtroom doors to review of executive decisions affecting the constitutional rights of citizens. In *Din*, a U.S. citizen wife challenged the State Department's denial of an immigrant visa to her husband. 135 S. Ct. 2128 (2015). The Court issued a plurality opinion in which Justice Kennedy's concurrence controls.[12] Justice Kennedy assumed that the visa denial implicated Ms. Din's constitutionally protected interests, and considered whether it was "facially legitimate and bonafide."[13] In so doing, Justice Kennedy made two key holdings. First, he found that the admission that Ms. Din's husband worked as a secretary for the Taliban "even if itself insufficient to support exclusion," was enough of an individualized articulated facial connection to terrorist activity to support a finding of inadmissibility. 135 S. Ct. at 1241 (Kennedy, J, concurring). Second, he found that Ms. Din had "not plausibly alleged with sufficient particularity" bad faith on the part of the government. *Id*.

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[10] Furthermore, "the foremost policy underlying the granting of [immigrant preference] visas under our immigration laws …[is] the reunification of families." *Lau v. Kiley*, 563 F.2d 543, 547 (2d Cir. 1977); *see also Kaliski v. Dist. Dir. of Immigration & Naturalization Serv.*, 620 F.2d 214, 217 (9th Cir. 1980) ("[T]he humane purpose [of the INA] is to reunite families.").

[11] *See Citizens United v. FEC*, 558 U.S. 310, 342 (2010) (First Amendment protection extends to corporations); *Minneapolis & S. L. R. Co. v. Beckwith*, 129 U.S. 26, 28 (1889) ("[C]orporations can invoke the benefits of provisions of the Constitution and laws which guarantee to persons the enjoyment of property, or afford to them the means for its protection, or prohibit legislation injuriously affecting it.").

[12] *See Cardenas v. United States*, 826 F.3d 1164, 1171 (9th Cir. 2016) (discussing plurality opinion in *Din*).

[13] The Supreme Court has previously established this standard for reviewing visa petition denials. *Kleindienst v. Mandel*, 408 U.S. 753, 770 (1972) (reviewing inadmissibility determination and waiver denial under facially legitimate and bona fide standard). The Ninth Circuit has held "that the 'facially legitimate and bona fide reason' test is equivalent to the rational basis test typically applied in equal protection cases." *Ablang v. Reno*, 52 F.3d 801, 804 (9th Cir. 1995) (citations and quotation marks omitted).

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Neither of the distinctions Justice Kennedy found critical in *Din* are present here. The EO at issue in this case is not individualized with respect to any immigrant visa beneficiary or petitioner; rather, it constitutes a generalized blanket denial of entries and immigrant visa issuance. Such a categorical exclusion that lacks any facial connection to an immigrant visa petitioner or beneficiary is sufficient to establish standing. In addition, unlike the petitioner in *Din*, Plaintiffs have alleged that the EO is, at least in part, motivated by animus against a religion and nationalities, which constitutes bad faith by the government. Thus, at a minimum, Plaintiffs meet Justice Kennedy's threshold test and, as such, have standing to seek this Court's review of their due process claim under a rational basis test (*see supra* n.13).

2. Plaintiffs Are Likely to Prevail on Their Claims.

Plaintiffs and proposed class members can show a strong probability of success on the merits of their claims. However, they need only show "serious questions going to the merits," which abound in this case because the balance of equities and public interest weigh heavily in their favor and they show a likelihood of success of irreparable harm. *Alliance for the Wild Rockies*, 632 F.3d at 1135. Under either inquiry, Plaintiffs and proposed class members can demonstrate that Defendants' EO and their subsequent application and enforcement of it fly squarely in the face of the Constitution, the INA, and the APA.

a. Likelihood of Success on INA, APA, and Mandamus Claims

Plaintiffs are likely to prevail on their claim that the EO—on its face and in its application—violates 8 U.S.C. § 1152(a)(1)(A) and the APA, and warrants mandamus relief. First, Plaintiffs are likely to prevail on their claim that the EO violates § 1152(a)(1)(A), which bars discrimination in visa issuance based on, inter alia, "nationality, place of birth, or place of residence." Section 3(c) of the EO violates the plain language of Section 1152(a)(1) because it discriminates on the basis of nationality. *See Consumer Product Safety Comm'n v. GTE Sylvania, Inc.*, 447 U.S. 102, 108 (1980) ("[T]he starting point for interpreting a statute is the language of the statute itself."). The EO abruptly, and without process, suspended entry of all

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immigrant visa holders from seven *nations*. Defendants additionally revoked the visas of all or many of these visa holders. Finally, Defendants applied this provision to immigrant visa applicants from these seven countries to justify suspending processing and issuance of immigrant visas. *See* Adams Decl., Ex. A. The EO, and Defendants' application of it, violates 8 U.S.C. § 1152(a)(1)(A) because it cuts off entry, adjudication, and issuance of immigrant visas using a nationality-based classification that Congress forbade. *See Almero v. INS*, 18 F.3d 757, 763 (9th Cir. 1994) ("[T]he INS may not *restrict* eligibility to a smaller group of beneficiaries than provided for by Congress").

The EO also violates the congressional intent and the object and policy behind § 1152(a)(1)(A)'s enactment. *See Gozlon-Peretz v. United States*, 498 U.S. 395, 407 (1991) ("In determining the meaning of the statute, we look not only to the particular statutory language, but to the design of the statute as a whole and to its object and policy.") (internal quotation marks omitted). In 1965, through the Immigration and Nationality Act of 1965, Pub. L. No. 89–236, 79 Stat. 911 (1965), Congress enacted § 1152(a)(1) to root out the discriminatory national origins quota system—in place between 1924 and 1965—that previously had restricted immigration on the basis of national origin.[14] *See* S. REP. 89-748, 1965 U.S.C.C.A.N. 3328, 3329 (1965) (noting that the "primary objective" of the 1965 Act was "the abolishment of the national origins quota system"); *Fei Mei Li v. Renaud*, 654 F.3d 376, 377 (2d Cir. 2011) (summarizing the history of the national origins quota system). In his signing statement, President Lyndon B. Johnson wrote that the 1965 Act "abolished" the national origin system, which "violated the basic principle of American democracy—the principle that values and rewards each man on the basis of his merit as a man." Lyndon B. Johnson, Remarks at the Signing of the Imm. Bill, Remarks (Oct. 3, 1965), *available at* http://www.lbjlibrary.org/lyndon-baines-johnson/timeline/lbj-on-immigration.

[14] Section 1152(a)(1) is the predecessor statute to current § 1152(a)(1)(A) and contains identical language.

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In 1995, the D.C. Circuit held that a State Department policy excluding Vietnamese nationals from applying for visas in Hong Kong violated 8 U.S.C. § 1152(a)(1)'s prohibition against nation origin discrimination, reasoning:

> Appellants assert this statute compels this court to invalidate any attempt to draw a distinction based on nationality in the issuance of visas. In contrast, appellees urge us to adopt the position that so long as they possess a rational basis for making the distinction, they are not in violation of the statute. . . . We agree with appellants' interpretation of the statute. Congress could hardly have chosen more explicit language. . . . We cannot rewrite a statutory provision which by its own terms provides no exceptions or qualifications . . . . Congress has unambiguously directed that no nationality-based discrimination shall occur.

Legal Assistance for Vietnamese Asylum Seekers v. Dep't of State, Bureau of Consular Affairs, 45 F.3d 469, 473 (D.C. Cir. 1995) *abrogated on other grounds*, *Legal Assistance for Vietnamese Asylum Seekers v. Dep't of State, Bureau of Consular Affairs*, 104 F.3d 1349 (D.C. Cir. 1997). *Accord Haitian Refugee Ctr. v. Civiletti*, 503 F. Supp. 442, 453 (S.D. Fla. 1980) ("[8 U.S.C. § 1152(a)(1)(A)] manifested Congressional recognition that the maturing attitudes of our nation made discrimination on [the listed] bases improper."). Subsequently, Congress amended § 1152(a)(1); it retained the existing non-discrimination mandate and moved it to newly-created subsection (A), and it enacted new subsection (B) which states that nothing in paragraph (A) limits the authority of the Secretary of State to determine the procedures or location of immigrant visa processing. 8 U.S.C. § 1152(a)(1). Consequently, the D.C. Circuit, in light of § 1152(a)(1)(B), upheld the State Department's policy as it applied *only* to the location of visa processing. *Legal Assistance for Vietnamese Asylum Seekers*, 104 F.3d at 1352-53.

Here, Plaintiffs demonstrate a likelihood of success on the merits of their claim. The plain language of the EO violates § 1152(a)(1)(A) by immediately banning the entry of immigrants from the seven targeted countries based upon their nationality. A ban on entry is equally a ban on visa issuance (as evidenced by Defendants' interpretation and application of Section 3 of the EO). An immigrant visa issues only after the State Department, acting in concert with the Department of Homeland Security and other security offices of the U.S.

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government, determines that an eligible individual is admissible under 8 U.S.C. § 1182. 8 U.S.C. § 1201(g)(3) (providing that no visa shall be issued if "the consular officer knows or has reason to believe that such [noncitizen] is ineligible to receive a visa […] under [§ 1182], or any other provision of law"). Upon entry into the United States, an immigrant visa holder is inspected and admitted by U.S. Customs and Border Protection, and then becomes a lawful permanent resident. *See* 8 U.S.C. § 1101(a)(13)(A) (defining "admission" and "admitted"); 8 U.S.C. § 1101(a)(20) (defining "lawfully admitted for permanent residence").

Moreover, because the wholesale suspension of visa processing based upon the nationality of the applicant results in the suspension of visa issuance, it too runs afoul of § 1152(a)(1)(A). The suspension of visa processing based upon nationality is not permitted under § 1152(a)(1)(B), both because the EO represents the President's policy (not the State Department's, although the latter is implementing it), and because a blanket suspension of visa processing for all nationals of these countries is not a "determ[ination about] the procedures" to be followed or the location of visa processing.

Defendant Trump issued the EO purportedly pursuant to 8 U.S.C. § 1182(f), which grants the Executive broad authority to suspend the entry of either "any [individual] aliens" or "any class of aliens" into the United States. However, the President's authority under § 1182(f) is confined by statutory and constitutional limits. Cardinal rules of statutory construction demonstrate that § 1182(f) cannot supersede the limitations created by Congress in 8 U.S.C. § 1152(a)(1)(A). First, the plain language of the statute cannot be construed to authorize a categorical suspension of *all* "aliens" or "nationals" covered by the nondiscrimination provision in § 1152(a)(1)(A); rather, in limiting that authority to "*any* alien" in the singular or "any class of aliens," the statute distinguishes between individuals or a subset of individuals, as compared to *all* individuals of a particular nationality.[15] Second, at the time Congress enacted § 1152(a), it is presumed to have been aware of the authority conferred to the President in § 1182(f). *See*

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15 *See Consumer Product Safety Commission*, 447 U.S. at 108.

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Lorillard v. Pons, 434 U.S. 575, 581 (1978) ("Congress normally can be presumed to have had knowledge of the interpretation given to the incorporated law, at least insofar as it affects the new statute."). Thus, as it was aware of the President's authority under § 1182(f), Congress presumably intended § 1152(a)(1)(A) to act as a limit on that authority. Third, § 1152(a)(1)(A) is narrower in scope than § 1182(f), and the more specific provision must be given effect. *See Green v. Bock Laundry Mach. Co.*, 490 U.S. 504, 524 (1989) ("A general statutory rule usually does not govern unless there is no more specific rule."). Pursuant to § 1152(a)(1)(A), the President can no more suspend entry of immigrant visas for individuals from the targeted seven countries than he can suspend issuance of immigrant visas to all female or all non-Caucasian applicants.[16]

In addition, the plain language of, and congressional intent in enacting, 8 U.S.C. § 1187(a)(12) do not sanction discrimination in issuing immigrant visas based on national origin. That statute focuses on which countries may qualify for the "visa waiver" program, a program that allows nationals of certain countries to enter the United States without a nonimmigrant visa. By its very terms, that section is limited to nonimmigrant (i.e., temporary) visas, not immigrant (i.e., permanent) visas, which are at issue here. Thus, there is no inconsistency between § 1152(a)(1)(A) and § 1187(a)(12). Moreover, nationals who benefit from the visa waiver program do not submit any visa application and, accordingly, are not screened and vetted before admission to the United States. This contrasts sharply with immigrant visas for which *all*

[16] Notably, not a single President has invoked § 1182(f) to authorize such a broad and discriminatory nationality-based suspension of entry. The closest analogue to the EO was President Reagan's 1986 temporary suspension of Cuban immigration in response to a diplomatic dispute with the Cuban government. Proclamation 5517, 51 Fed. Reg. 30470 (1986). That proclamation, however, was never challenged as violating § 1152(a)(1)(A) and it included, inter alia, a carve out for immediate relative visa petitions. Moreover, although previous presidents have invoked § 1182(f) in over forty instances, these proclamations have been narrowly tailored to address specific individuals whose entry would be inconsistent with U.S. foreign policy interests. *See, e.g.*, Proclamation 5887, 53 Fed. Reg. 43184 (1988) (suspending the entry of officers of the Nicaraguan government or the Sandinista National Liberation Front); Executive Order 13694, 80 Fed. Reg. 18077 (2015) (suspending the entry of persons determined to have engaged in "significant malicious cyber-enabled activities"); *see also* 9 Foreign Affairs Manual 302.14-3(B)(1) (noting that presidents have invoked § 1182(f) to "bar entry based on affiliation" or to "suspend the entry of persons based on objectionable conduct").

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applicants are thoroughly screened and passed through several security and medical clearance processes before being approved to seek entry.

Second, Plaintiffs are likely to prevail on their claim that nationality-based classifications, interpretations, and actions violate the APA's prohibition against unlawful and unconstitutional government conduct. *See* 5 U.S.C. §§ 706(2)(A)-(D). Defendants' failure to comply with the law creates a "legal wrong" and an agency action that "adversely affected or aggrieved" Plaintiffs and proposed class members, which entitles them to relief under the APA. 5 U.S.C. § 702. Not only is Defendants' ongoing flouting of § 1152(a)(1)(A) "not in accordance with law," "in excess of statutory jurisdiction," and "without observance of procedure required by law," it is "contrary to constitutional right." 5 U.S.C. § 706(2)(A)-(D); *see infra* Sections II.B.2.b and c.

Third, Plaintiffs are likely to succeed on their request for mandamus relief under 28 U.S.C. § 1361. Mandamus relief is warranted if "(1) the individual's claim is clear and certain; (2) the official's duty is nondiscretionary, ministerial, and so plainly proscribed as to be free from doubt; and (3) no other adequate remedy is available." *Patel*, 134 F.3d at 931. Plaintiffs have a clear claim to nondiscriminatory adjudication and issuance of their immigrant visas; Defendants' duties to adjudicate, issue, and honor immigrant visas are plainly set forth throughout the INA and implementing regulations, and absent intervention by a federal court, Plaintiffs and class members will remain in legal limbo, for 90 days at a minimum, and potentially indefinitely. *See* 82 Fed. Reg. 8977, 8978.

The Ninth Circuit has held that "[m]andamus may not be used to instruct an official how to exercise discretion unless that official has ignored or violated 'statutory or regulatory standards delimiting the scope or manner in which such discretion can be exercised.'" *Silveyra v. Moschorack*, 989 F.2d 1012, 1015 (9th Cir. 1993) (quoting *Carpet Linoleum and Resilent Tile Layers v. Brown*, 656 F.2d 564, 566 (10th Cir. 1981)). In such an event, "mandamus is appropriate." *Id.* at 1014. As discussed above, Defendants have clearly exceeded the scope of

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their discretionary authority to determine procedures and locations for the processing of immigrant visas under 8 U.S.C. § 1152(a)(1)(B) and to suspend entry under 8 U.S.C. § 1182(f).

Thus, Plaintiffs and proposed class members are likely to succeed in their INA, APA, and mandamus claims.

b. Likelihood of Success on The Equal Protection Claim

Plaintiffs also are likely to succeed on their claim that the EO violates the guarantee of equal protection under the Due Process Clause of the Fifth Amendment. Executive orders, like other governmental actions, are subject to constitutional limits. *See, e.g., Youngstown Sheet and Tube Co. v. Sawyer*, 343 U.S. 579, 587-89 (1952) (holding that the President acted without constitutional power when he issued an order directing the Secretary of Commerce to take possession of and operate most of the nation's steel mills); *Cornelius v. NAACP Legal Def. & Educ. Fund, Inc.*, 473 U.S. 788 (1985) (analyzing whether an executive order violated plaintiffs' First Amendment rights); *United States v. Nixon*, 418 U.S. 683 (1974) (President, as head of the executive branch of government, is not above the law). Noncitizens, including those who are unlawfully present in the United States, "com[e] within the ambit of the equal protection component of the Due Process Clause." *Kwai Fun Wong v. United States*, 373 F.3d 952, 974 (9th Cir. 2004). Plaintiff and proposed class member petitioners consist of U.S. citizens and LPRs, all who are entitled to the full panoply of the Fifth Amendment's protections. Similarly, proposed class members that are U.S. based-employers similarly have constitutionally protected interests. *See supra* n. 11.

Moreover, even Plaintiffs and proposed class members who are outside of the United States may challenge an order that blatantly discriminates against them on the basis of national origin and religion. Although both Congress and the Executive have plenary power over immigration, neither branch may execute this power in violation of the Constitution. *See, e.g., Zadvydas v. Davis*, 533 U.S. 678, 695 (2001) ("[The] 'plenary power' to create immigration law … is subject to important constitutional limitations"); *INS v. Chadha*, 462 U.S. 919, 941 (1983)

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(plenary authority may not be exercised in a way that "offend[s] some other constitutional restriction") (quoting *Buckley v. Valeo*, 424 U.S. 1, 132 (1976)). Thus, the plenary power does not support the assertion that noncitizens outside of the United States have no constitutional rights, nor does it eliminate the ability to bring a challenge against the government for discrimination on the basis of, inter alia, religion and national origin, where such a policy would clearly be unconstitutional if applied to persons within the United States.

Accordingly, this Court should apply strict scrutiny to Section 3(c) of the EO, which discriminates on the basis of both national origin and religion. *See, e.g.*, *Ball v. Massanari*, 254 F.3d 817, 823 (9th Cir. 2001) (noting that discrimination based on a suspect class, such as national origin or religion, is subject to strict scrutiny); *Christian Sci. Reading Room Jointly Maintained v. City of San Francisco*, 784 F.2d 1010, 1012 (9th Cir. 1986) (noting that "an individual religion meets the requirements for treatment as a suspect class"); *see also Hassan v. City of New York*, 804 F.3d 277, 301 (3d Cir. 2015) ("intentional discrimination based on religious affiliation must survive heightened equal protection review"). To prevail, Plaintiffs must show that the challenged action is either discriminatory on its face or that discriminatory animus against a protected class was a "motivating factor." *Arce v. Douglas*, 793 F.3d 968, 977 (9th Cir. 2015) (internal citation omitted).

On its face, the EO targets visa applicants and visa holders on the basis of their nationality. Moreover, President Trump's animus towards Muslims is made clear by his own statements, and those of his advisor, with regard to imposing a "Muslim ban." *See* Dkt. 1 ¶¶ 48-50. Although the EO does not mention Muslims explicitly, advisors to the President have confirmed it was intended to ban Muslims. Dkt. 1 ¶49 (noting the statement of Rudolph Giuliani that President-Elect Trump asked him to write a "legal" ban on Muslims). Indeed, President Trump admitted that the EO was intended to prioritize Christian refugees. Daniel Burke, *Trump says US will prioritize Christian refugees*, CNN (Jan. 30, 2017), *available at* http://www.cnn.com/2017/01/27/politics/trump-christian-refugees/; Dkt. 1 ¶50. President

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Trump's animus towards countries included in the ban is similarly well-documented.[17] Because no compelling government interest is served by such discriminatory motives, Plaintiffs are likely to succeed on the merits of their equal protection claim. Further, religious discrimination or discrimination on the basis of national origin, even in the name of national security, is an equal protection violation. *Hassan*, 804 F.3d at 298 (blanket surveillance of Muslims violates equal protection even if the NYPD was subjectively motivated by "a legitimate law-enforcement purpose").

Even if the Court were to apply a rational basis analysis, Plaintiffs are likely to prevail. *See, e.g.*, *Ram v. INS*, 243 F.3d 510, 517 (9th Cir. 2001) (evaluating whether "'[l]ine-drawing' decisions made by . . . the President in the context of immigration and naturalization . . . are rationally related to a legitimate government purpose"). Where a government's proposed solution to a problem is discrimination against a disfavored class and all evidence shows that such a solution is "ludicrously ineffectual," the government has not acted rationally. *Plyer v. Doe*, 457 U.S. 202, 228 (1982) ("[W]e think it clear that '[charging] tuition to undocumented children constitutes a ludicrously ineffectual attempt to stem the tide of illegal immigration'") (internal citation omitted).

In this case, the EO's discriminatory response to the alleged problem of terrorist entry to the United States is "ludicrously ineffectual." In the last 30 years, no individual from the seven affected countries has killed an American in a terrorist attack in the United States. Alex Nowsrasteh, *Guide to Trump's Executive Order to Limit Migration for "National Security"*

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[17] *See, e.g.*, Donald Trump (@realDonaldTrump), Twitter (Mar. 24, 2016, 10:55 AM), https://twitter.com/realdonaldtrump/status/713031504415338497 ("Europe and the U.S. must immediately stop taking in people from Syria. This will be the destruction of civilization as we know it! So sad!"); Donald Trump (@realDonaldTrump), Twitter (Oct. 24, 2016, 7:00 AM), https://twitter.com/realdonaldtrump/status/790523240351498241 ("...Crooked Hillary wants to take in as many Syrians as possible. We cannot let this happen - ISIS!"); Ben Kamisar, *Trump: I would shoot confrontational Iranian ships*, THE HILL (Sept. 9, 2016), http://thehill.com/blogs/ballot-box/presidential-races/295273-trump-i-would-shoot-at-confrontational-iranian-ships ("With Iran, when they circle our beautiful destroyers with their little boats and they make gestures at our people that they shouldn't be allowed to make, they will be shot out of the water"); Ben Jacobs & Alan Yuhas, *Somali migrants are 'disaster' for Minnesota, says Donald Trump*, THE GUARDIAN (Nov. 7, 2016).

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Reasons, CATO INSTITUTE (Jan. 26, 2017), https://www.cato.org/blog/guide-trumps-executive-order-limit-migration-national-security-reasons. The EO's blanket ban on *all* immigration by nationals of these seven predominantly Muslim nations, including children of U.S. citizen and lawful permanent residents who already reside in the United States, in the name of baring "those who engage in acts of bigotry or hatred" or "would oppress Americans," EO § 1, 82 Fed. Reg. 8977, is so over-inclusive as to be incoherent. *See also, e.g.*, Omar Decl. ¶3, 7 (ban affects U.S. citizen's son who is a Somali national by law but has never lived in Somalia). Because any justification for the EO is not rationally related to a legitimate government purpose, Plaintiffs are likely to prevail.

c. Likelihood of Success on Due Process Claim

Plaintiffs also are likely to succeed on their claims that Defendants' unlawful actions deprive Plaintiffs Juweiya Ali, Reema Dahman, and Ahmed Ali and other U.S. citizen and LPR visa petitioners of their constitutionally protected liberty interests. *See supra* Section II.A.1. The Fifth Amendment protects people from deprivations of liberty interests absent due process of law. U.S. Const. amend. V. At a minimum, it protects against arbitrary government action, including actions that do not adhere to the constraints that Congress has imposed, that would infringe upon the exercise of protected liberty interests. *See, e.g.*, *Del Monte Dunes v. Monterey*, 920 F.2d 1496, 1508 (9th Cir. 1990) ("We cannot say at this stage of the proceeding that the actions of the city council, . . . were not arbitrary and irrational and, thus, a violation of appellants' substantive due process rights."). Indeed, the Ninth Circuit has confirmed that a U.S. citizen or LPR spouse has the right to bring a due process challenge to the denial of a family member's visa. *See, e.g.*, *Bustamante*, 531 F.3d at 1062 ("Freedom of personal choice in matters of marriage and family life is, of course, one of the liberties protected by the Due Process Clause.").

Moreover, Congress has made clear that Plaintiff and proposed class member beneficiaries outside the country are entitled to have their visas adjudicated and issued in a

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manner that does not discriminate based upon national origin or country of birth. 8 U.S.C. § 1152(a)(1)(A). While the Supreme Court emphasized that persons denied entry into the United States are entitled only to limited review, such actions must still comport with the Constitution and whatever procedural due process Congress has provided. *See Knauff v. Shaughnessy*, 338 U.S. 537, 544 (1950) ("Whatever the procedure authorized by Congress is, it is due process as far as an alien denied entry is concerned."). In the instant case, Congress has established an elaborate system for issuing visas, and explicitly barred the Executive from discriminating based on national origin or country of birth when administering that system. *Cf. Din*, 135 S. Ct. at 2136 (J. Scalia, announcing judgment of the court in a plurality opinion) (recognizing that at a minimum "procedural due process rights attach to liberty interests that either are (1) created by nonconstitutional law, such as a statute").

Here, Defendants' actions in suspending the processing of immigrant visas and in denying the validity of existing immigrant visas, taken pursuant to the EO, deprive U.S. citizens and lawful permanent resident visa petitioners of protected liberty interests in their family lives, marriages, and ability to raise their children, without due process. Defendants' abrupt change of course, without any notice to affected individuals or evidence of the need to categorically bar all visa applicants from the designated countries, including young children whose parents are already living in the United States, were completely arbitrary. *See, e.g.*, A. Ali Decl. ¶¶19-21 (describing Plaintiff E.A. receiving a validly issued immigrant visa on January 26, 2017 and arriving at the airport on January 28, 2017 to discover, with no notice, that E.A. "was not permitted [to] board the flight due to the U.S. President's Executive Order"); Farahani Decl. ¶¶8-11 (parents were en route to U.S. when EO took effect and were sent back without adequate explanation at their connection); Elias Decl. ¶¶4-5 (U.S. citizen's wife was issued visa on January 20 but not allowed to board flight for U.S. on January 29, without prior notice); Edward Decl. ¶¶6-8 (U.S. citizen's husband arrived at airport only to be denied admission and was not even allowed to contact his counsel or wife). Such actions fly in the face of due process. *Shanks*

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v. Dressel, 540 F.3d 1082, 1089 (9th Cir. 2008) (suggesting that conduct may be "constitutionally arbitrary" where there is evidence "of a sudden change in course, malice, bias, [or] pretext").[18]

3. Plaintiffs and Proposed Class Members Have Suffered, and Will Continue to Suffer, Irreparable Harm Absent This Court's Intervention.

Plaintiffs and proposed class members face more than simply the "possibility of irreparable harm." *Winter*, 555 U.S. at 22. Rather, they are able to demonstrate the likelihood of immediate, concrete, irreparable harm absent this Court's intervention. *See Leiva-Perez v. Holder*, 640 F.3d 962, 969-70 (9th Cir. 2011) (holding that "separation from family members, medical needs, and potential economic hardship" are important irreparable harm factors) (internal quotation marks omitted); *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (stating that "the deprivation of constitutional rights unquestionably constitutes irreparable injury.") (quotation marks omitted); *see also* 11A Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, Federal Practice & Procedures § 2948.1 (2d ed. 1995) ("When an alleged deprivation of a constitutional right is involved most courts hold that no further showing of irreparable injury is necessary.").[19]

Plaintiffs and proposed class members are mothers and fathers eager to bring their children to live with them in the United States. *See, e.g.*, Omar Decl. ¶12; Niknejad Decl. ¶¶7-9; Abdi Decl. ¶3; A. Ali Decl. ¶2; Dahman Decl. ¶¶17-18; Uysal-Ferre Decl. ¶14. They are

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[18] For the same reasons set forth in this section, Plaintiffs Dahman, G.E., Ms. Ali, and A.F.A, and proposed class members with immigrant visa applications merit a preliminary injunction to prevent Defendants from again suspending processing and/or issuance of immigrant visas pursuant to the EO. For example, Defendant DOS explicitly had rejected the possibility of scheduling immigrant visa interviews for class members, even in emergency situations, shortly after the EO was issued. *See* Adams Decl., Ex. A at 1 (stating, in a DOS announcement removed after the TRO in *Washington* issued, "Q: I have an emergency. Can I request an expedited appointment? A: No. The Department of State may not conduct immigrant visa interviews for any persons who are nationals of Syria, Iraq, Iran, Libya, Somalia, Sudan, and Yemen at this time."). Absent a preliminary injunction on this aspect of Defendants' possible implementation of the EO, there is nothing to prevent Defendants from engaging in this unlawful behavior again.

[19] Since this Court issued the *Washington* TRO, some Plaintiffs, proposed class members, and declarants have been able to enter the United States with their valid immigrant visas. However, should an appellate court dissolve the existing TRO in *Washington* or should this Court fail to extend that TRO, the EO will again slam a door shut on remaining Plaintiffs and proposed class members, who will continue to face the irreparable harm outlined here.

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employers in competitive environment and professionals sought by U.S. companies. *See* Updahye Decl. ¶¶4, 8; Siskind Decl. ¶¶11-12. *See also, e.g.*, *Washington*, 2:17-cv-141-JLR, Dkt. 6 ¶11; *id.* Dkt. 7 ¶21; *id.* Dkt. 17-5 ¶8. They are sons and daughters worried about the well-being of their elderly parents. *See, e.g.*, Safari Decl. ¶2; Tahhan Decl. ¶¶3-5; Farahani Decl. ¶2. They are spouses impatient to start living together as a family after having put their lives on hold while waiting for years to be reunited. *See, e.g.*, Adam Decl. ¶3; Edward Decl. ¶2; Hussain Decl. ¶3; Abdi Decl. ¶3; Sobhani Decl. ¶¶7, 11. Many of these plaintiffs and putative class members have already been apart for many years. *See, e.g.*, Dahman Decl. ¶6 (mother who has not seen her son in more than four years); Farahani Decl. ¶2 (son who has only seen his parents twice since 2010). And some class members have never had the opportunity to meet each other. *See* Abdi Decl. ¶3 (father has yet to meet his second son).

Many of these proposed class members have already been greatly harmed by the EO. They have incurred significant expenses attempting to rebook travel or secure lodging after being left stranded in unfamiliar countries. *See, e.g.*, Safari Decl. ¶¶11-12; Tahhan Decl. ¶6; Abdi Decl. ¶7; *cf.* Updahye Decl. ¶7. Named Plaintiff Ahmed Ali found himself having to extend his leave of absence from work in order to remain with his 12-year-old daughter, who was not permitted to board the plane, in Djibouti until they determined what to do—putting the financial stability of his whole family at risk, as he is the sole breadwinner. A. Ali Decl. ¶23-24. Plaintiffs and proposed class members have also suffered tremendous stress and emotional trauma arising not only from disappointment and uncertainty in the wake of the EO, but also from their concerns for the well-being and safety of their family members. *See, e.g.*, Niknejad Decl. ¶7 (describing feeling "devastated"); Adam Decl. ¶8 (detailing inability to focus and "trouble sleeping"); Edward Decl. ¶7 (reporting "great distress"); Abdi Decl. ¶7 (characterizing the situation as "heartbreaking"); Ali ¶25 (noting that "[t]he uncertainty of our situation is very stressful"); Farahani Decl. ¶11 (remarking the day his father was not allowed to board his connecting flight and was detained for about 18 hours was "the worst day of [his father's] life"

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and "one of my worst days too"); Sobhani Decl. ¶¶7-9 (declaring he felt "completely helpless with no recourse for relief"). Many more have been shaken and offended to their core by the discriminatory treatment they and their family members experienced. *See, e.g.*, Farahani Decl. ¶13 ("I feel . . . like a second class citizen"); Niknejad Decl. ¶10 ("I . . . cannot understand why this country I love is doing this to me and my family."); Adam Decl. ¶8 ("[A]s a citizen, I am concern[ed] about my constitutional rights. . ."); Abdi Decl. ¶9 ("Asking why I want my family with me is very silly and shameful."); Uysal-Ferre Decl. ¶13 ("How do you tell a 7-year-old little boy that, 'no, you cannot come to live with your father, little sister and mother because you have a passport of a certain country?'").

Absent a grant of preliminary relief, the irreparable harm putative class members have experienced will only increase. The financial burden on many class members will increase as they are forced to continue to maintain multiple households. *See, e.g.*, Omar Decl. ¶11; Adam Decl. ¶9. Others will be deprived of academic and professional opportunities to which they would have access in the United States. *See* Omar Decl. ¶10 (noting that delay "would interfere with his [son's] ability to attend a school in the United States and build a career"). *See also, e.g.*, Niknejad Decl. ¶8; Hussain Decl. ¶7; Upadhye Decl. ¶8; Dahman Decl. ¶10. Meanwhile, delay resulting from the EO would cause others to have to start the immigrant visa petition process again. The son of class member Mohamed Omar, for example, would have to start the visa application process anew as a member of a different visa category if his currently issued immigrant visa is revoked or not accepted pursuant to the EO. It would "likely take over six years before he would be able to obtain a new immigrant visa"—on top of the more than four years he has already waited to be reunited with his father. Omar Decl. ¶¶5, 10.

Others are being deprived of needed medical care or other assistance to which they would have access in the United States. *See, e.g.*, Tahhan Decl. ¶5 (concerned because his 76 and 70-year-old parents are in Syria alone without any of their children to care for them); Farahani Decl. ¶¶2-3 (elderly parents are both sick, and in Los Angeles they would have the care of two of their

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children). Many others will be forced to return to, or continue living in, areas plagued by civil strife, war, and similar dangers. *See, e.g.*, Tahhan Decl. ¶¶5,7 (noting that even clean drinking water is hard to come by in Syria); Omar Decl. ¶ 7-9 (explaining that his son, a Somali national who has never lived in Somalia, has no safe place to go); Adam Decl. ¶8 (expressing concern for his wife, who lives alone in Sudan); Edward Decl. ¶4 (highlighting "serious and life threatening problems" client would face in Somalia); A. Ali Decl. ¶25 (describing the situation in Yemen as "extraordinarily dangerous"); Dahman Decl. ¶¶10, 15 (expressing concern for her son's safety the longer he remains in Syria, because the "situation in Syria is so unstable that my son has even been kidnapped"). As one class member—a Pakistani citizen who is an LPR and petitioned for his Iranian wife—explained, the United States is the only place where his family can live safely. He "could not own property or hold civil rights of any kind in Iran," because he is not an Iranian citizen, and living in Pakistan presents significant risks, as members of his family have been threatened there due to their religion. Hussain Decl. ¶7. The stress and consternation Plaintiffs and putative class members are experiencing because their family members are in harms' way also constitute concrete irreparable harm. *See, e.g.*, Farahani Decl. ¶12; Dahman Decl. ¶¶16-17.

Finally, absent preliminary relief, plaintiffs and prospective class members will suffer certain irreparable harm in the form of family separation. Many class members face the prospect of a prolonged, potentially indefinite separation, with all its attendant challenges. *See, e.g.*, Omar Decl. ¶¶11-12; Niknejad Decl. ¶10; Adam Decl. ¶¶3, 10; Hussain Decl. ¶¶ 3-4, 7. Such separation takes an emotional toll on these putative class members, all the more so when there are no clear answers as to when it will end. *See, e.g.*, Safari Decl. ¶13 (stating that grandparents will miss the birth of their grandchild); Adam Decl. ¶8 (expressing hope that his "wife could attend th[e] lifetime opportunity" of his upcoming graduation); Farahani Decl. ¶6 (explaining he had planned to "celebrate Nowruz, the Persian New Year, together as a family"); Abdi Decl. ¶3 (explaining that he missed birth of his son). For those with elderly parents or family members in dangerous locations, there looms the specter of a permanent, final separation. *See, e.g.*, Tahhan

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Decl. ¶7 ("I am afraid that this Executive Order will prevent me from seeing my [Syrian] parents for the rest of my life."); Farahani Decl. ¶10 ("I had thought I was going to be reunited with my parents. Instead, I wasn't sure we would be together again."); Dahman Decl. ¶ 16 (explaining that "everyday" she lives with the fear of "not knowing if [she] will ever see [her] child again").

It is well recognized that the types of harm Plaintiffs and putative class members are experiencing and will continue to experience are of an irreparable nature so as to warrant a grant of preliminary injunctive relief. *See, e.g.*, *Chalk v. U.S. Dist. Court Cent. Dist. of California*, 840 F.2d 701, 709-10 (9th Cir. 1988) (holding that "emotional and psychological" injury, including injury arising from discriminatory treatment, can constitute irreparable harm); *Arizona Dream Act Coalition v. Brewer*, 757 F.3d 1053, 1068 (9th Cir. 2014) (holding that "intangible injuries . . . [which] generally lack an adequate legal remedy" and loss of opportunity to pursue professional advancement can constitute irreparable harm). This Court has already recognized that adverse effects on "employment, education, business, family relations, and freedom of travel" are factors relevant to the question of whether "immediate and irreparable injury" is probable. *Washington*, 2:17-cv-141-JLR, Dkt. 52 at 4 (TRO). Preliminary injunctive relief is thus appropriate.[20]

4. The Public Interest and Balance of Equities Weigh Heavily in Favor of Granting Injunctive Relief.

The public interest and balance of equities factors "merge" when, as in this case, the government is a party. *Drakes Bay Oyster Co. v. Jewell*, 747 F.3d 1073, 1092 (9th Cir. 2014). Regardless, both factors strongly favor Plaintiffs and proposed class members. If the Court does

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[20] Plaintiffs Dahman, G.E., Ms. Ali, and A.F.A, and proposed class members with immigrant visa applications similarly would face irreparable harm due to Defendants' decision to suspend the processing and/or issuance of immigrant visas absent preliminary relief. *See, e.g.*, Niknejad Decl. ¶ 9 (61-year-old LPR father facing potentially indefinite separation from his daughter); Adam Decl. ¶6 (U.S. citizen facing additional delays in adjudication of his wife's immigrant visa after two and a half years of waiting); Hussain Decl. ¶6 (LPR being prevented from reuniting with his wife and seven-month-old baby); Abdi Decl. ¶6 (U.S. citizen facing additional delays in being reunited with his two-year-old son due to delays in the scheduling of consular interviews; Dahman Decl. ¶¶16-18 (LPR mother facing potentially indefinite separation from son in war-torn Syria); Uysal-Ferre Decl. ¶13-14 (U.S. citizen facing uncertain separation from seven-year-old son in Somalia).

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not provide immediate injunctive relief, Plaintiffs and the proposed class will continue to suffer irreparable harm, including the ongoing violation of their statutory and constitutional rights, separation from their families, emotional trauma, untenable financial burdens, and deprivation of medical and familial care. *See supra* Section II.B.3. Furthermore, the EO includes provisions that would extend the unlawful visa processing and issuance ban under certain circumstances, potentially prolonging the separation of these families indefinitely. 82 Fed. Reg. 8977, 8978 § 3(e) (permitting indefinite extension if the Secretary determines that an affected country does not share sufficient data with the United States).[21]

What Plaintiffs and class members seek—that Defendants follow the lawful visa adjudication and issuance process and permit entry into the United States for those with validly approved for immigrant visas—would cause no countervailing harm whatsoever; indeed, it would be in the public interest. Defendants already have put immigrant visa holders in the proposed class through extensive security screening and found each to be admissible to the United States. *See*, *e.g.*, Dkt. 1 ¶33-34; Edward Decl. ¶¶4-5; Niknejad Decl. ¶4. As discussed *supra* at Section II.B.2.b, the ban on entry impacting Plaintiffs and class members has no legitimate purpose; there is simply no evidence that it has any bearing on national security.

Instead of protecting the United States, the EO led Defendants to unlawfully separate families and unconstitutionally discriminate on the basis of religion and national origin. *See supra* Section II.B.2.b. The Ninth Circuit "agree[s] . . . that it is always in the public interest to prevent the violation of a party's constitutional rights." *Melendres*, 695 F.3d at 1002 (quotation omitted); *see also Small v. Avanti Health Sys., LLC*, 661 F.3d 1180, 1197 (9th Cir. 2011) ("[T]he public interest favors applying federal law correctly."); *Rodriguez v. Robbins*, 715 F.3d 1127, 1146 (9th Cir. 2013) ("[T]he public interest . . . benefits from a preliminary injunction that

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[21] *See also* Adams Decl., Ex. A at 1 (evidencing that, in an announcement removed after the TRO in *Washington* issued, DOS cancelled all visa interviews and advised individuals not to schedule medical examinations, which have a 6-month expiration date, because "we cannot predict when your visa interview will be rescheduled").

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ensures that federal statutes are construed and implemented in a manner that avoids serious constitutional concerns.”).

Thus, Plaintiffs and the proposed class respectfully submit that the balance of equities and public interest tip sharply in their favor. As such, they meet the standard for obtaining a preliminary injunctive relief.[22]

III. CONCLUSION

Plaintiffs and members of the proposed class have demonstrated that they satisfy the required criteria for injunctive relief. Accordingly, the Court should grant this motion.

Dated this 6th day of February, 2017.

s/*Matt Adams*
Matt Adams, WSBA No. 28287

s/*Glenda Aldana*
Glenda M. Aldana Madrid, WSBA No. 46987

Maria Lucia Chavez, WSBA No. 43826,
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[22] For the same reasons discussed in this section, the public interest and balance of equities factors strongly favor Plaintiffs Dahman, G.E., Ms. Ali, and A.F.A, and proposed class members with immigrant visa applications.

(617) 227-9727
(617) 227-5495 (fax)

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CERTIFICATE OF SERVICE

I Matt Adams, hereby certify that on February 6, 2017, I arranged for electronic filing of the foregoing motion and all supporting declarations with the Clerk of the Court using the CM/ECF system. I also emailed these documents to Defendants' counsel, Stacey I. Young, at Stacey.Young@usdoj.gov. Lastly, I arranged for mailing of these documents by U.S. first class mail, postage prepaid, to:

Donald TRUMP, President of the United States of America
United States Attorney's Office
700 Stewart Street, Suite 5220
Seattle, WA 98101-1271

U.S. CITIZENSHIP AND IMMIGRATION SERVICES
Office of the General Counsel
United States Department of Homeland Security
Washington, DC 20528

U.S. DEPARTMENT OF STATE
The Executive Office
Office of the Legal Adviser, Suite 5.600
600 19th Street NW
Washington, DC 20522

Lori SCIALABBA, Acting Director of USCIS
Office of the General Counsel
United States Department of Homeland Security
Washington, DC 20528

Rex W. TILLERSON, Secretary of State
The Executive Office
Office of the Legal Adviser, Suite 5.600
600 19th Street NW
Washington, DC 20522

OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE
Office of General Counsel
Washington, DC 20511

U.S. DEPARTMENT OF HOMELAND SECURITY
Office of the General Counsel
Washington, DC 20528

Michael DEMPSEY, Acting Director of National Intelligence
Office of the Director of National Intelligence
Office of General Counsel
Washington, DC 20511

John F. KELLY, Secretary of Homeland Security
Office of the General Counsel
United States Department of Homeland Security
Washington, DC 20528

Executed in Seattle, Washington, on February 6, 2017.

s/ Matt Adams
Matt Adams, WSBA No. 28287

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Honorable James L. Robart

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

Juweiya Abdiaziz ALI; A.F.A., a minor; Reema Khaled DAHMAN; G.E., a minor; Ahmed Mohammed Ahmed ALI; E.A., a minor; on behalf of themselves as individuals and on behalf of others similarly situated, Plaintiffs, v. Donald TRUMP, President of the United States of America; U.S. DEPARTMENT OF STATE; Rex W. TILLERSON, Secretary of State; U.S. DEPARTMENT OF HOMELAND SECURITY; John F. KELLY, Secretary of Homeland Security; U.S. CITIZENSHIP AND IMMIGRATION SERVICES; Lori SCIALABBA, Acting Director of USCIS; OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE; Michael DEMPSEY, Acting Director of National Intelligence, Defendants.	Case No.: 2:17-cv-00135-JLR **[PROPOSED] ORDER GRANTING PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

Upon consideration of Plaintiffs' Motion for Preliminary Injunctive Relief, the parties' briefing, and oral argument, this Court finds that Plaintiffs have demonstrated a need for preliminary injunctive relief in this case. *See Winter v. Natural Resources Defense Council*,

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Inc., 555 U.S. 7, 20 (2008); *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131-35 (9th Cir. 2011).

Accordingly, it is hereby ORDERED that, pending a trial on the merits, Defendants and all their respective officers, agents, servants, employees, attorneys, and persons acting in concert of participation with them are:

1. Enjoined and restrained from enforcing Section 3 of Executive Order 13769 (EO), in so far as it precludes persons approved for immigrant visas from boarding flights to the United States and entering the country as lawful permanent residents;
2. Enjoined and restrained from applying Section 3 of the EO to suspend the processing and/or issuance of immigrant visas to Plaintiffs Juweiya Abdiaziz Ali and A.F.A., Reema Khaled Dahman and G.E., and all other proposed class members who have filed visa petitions and the beneficiaries of those visa petitions who are applying for immigrant visas;
3. Enjoined and restrained from revoking immigrant visas based on Section 3 of the EO;
4. Ordered to reinstate and, where necessary, reissue, the immigrant visas of all nationals from the seven countries that were revoked pursuant to the issuance of the EO, without the need for the foreign national to reapply for a visa;
5. Ordered to issue transportation letters, where necessary, to all nationals from the seven countries with validly issued immigrant visas, including all individuals whose visas are reinstated pursuant to #4 above; and
6. Ordered to advise immigrant visa petitioners, through electronic mail or otherwise, of the status of immigrant visa applications submitted by beneficiaries of their petitions.

This preliminary injunction is granted on a nationwide basis.

This Court has exercised its discretion to determine that no bond shall be required and that this Order shall be effective immediately.

Upon consideration of Plaintiffs' Motion for a Temporary Restraining Order, the parties' briefing, and oral argument, if any, this Court finds that Plaintiffs have demonstrated a need for preliminary injunctive relief in this case. *See Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 20 (2008); *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131-35 (9th Cir. 2011). The standard for issuing a TRO is the same as the standard for issuing a

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preliminary injunction. *See New Motor Vehicle Bd. Of Cal. v. Orrin W. Fox Co.*, 434 U.S. 1345, 1347 n.2 (1977); *Stuhlbarg Int'l Sales Co., Inc. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001).

Accordingly, if prior to adjudication of the motion for preliminary injunctive relief, the temporary restraining order this Court entered on February 3, 2017 in the related case of *Washington v. Trump*, 2:17-cv-141-JLR, Dkt. 52, is dissolved for a reason other than a determination with respect to the merits of the challenge, this Court hereby ORDERS a TEMPORARY RESTRAINING ORDER providing that Defendants and all their respective officers, agents, servants, employees, attorneys, and persons acting in concert of participation with them are *immediately*:

1. Enjoined and restrained from enforcing Section 3 of Executive Order 13769 (EO), in so far as it precludes persons approved for immigrant visas from boarding flights to the United States and entering the country as lawful permanent residents;
2. Enjoined and restrained from applying Section 3 of the EO to suspend the processing and/or issuance of immigrant visas to Plaintiffs Juweiya Abdiaziz Ali and A.F.A., Reema Khaled Dahman and G.E., and all other proposed class members who have filed visa petitions and the beneficiaries of those visa petitions who are applying for immigrant visas;
3. Enjoined and restrained from revoking immigrant visas based on Section 3 of the EO;
4. Ordered to reinstate and, where necessary, reissue, the immigrant visas of all nationals from the seven countries that were revoked pursuant to the issuance of the EO, without the need for the foreign national to reapply for a visa;
5. Ordered to issue transportation letters, where necessary, to all nationals from the seven countries with validly issued immigrant visas, including all individuals whose visas are reinstated pursuant to #4 above; and
6. Ordered to advise immigrant visa petitioners, through electronic mail or otherwise, of the status of immigrant visa applications submitted by beneficiaries of their petitions.

This temporary restraining order is granted on a nationwide basis.

This Court has exercised its discretion to determine that no bond shall be required and that this Order shall be effective immediately.

IT IS SO ORDERED.

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DATED this ____________ day of ________________________, 2017.

____
JAMES L. ROBART
UNITED STATES DISTRICT JUDGE

Presented this 6th day of February, 2017, by:

s/Matt Adams
Matt Adams, WSBA No. 28287
Northwest Immigrant Rights Project
Counsel for Plaintiffs

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